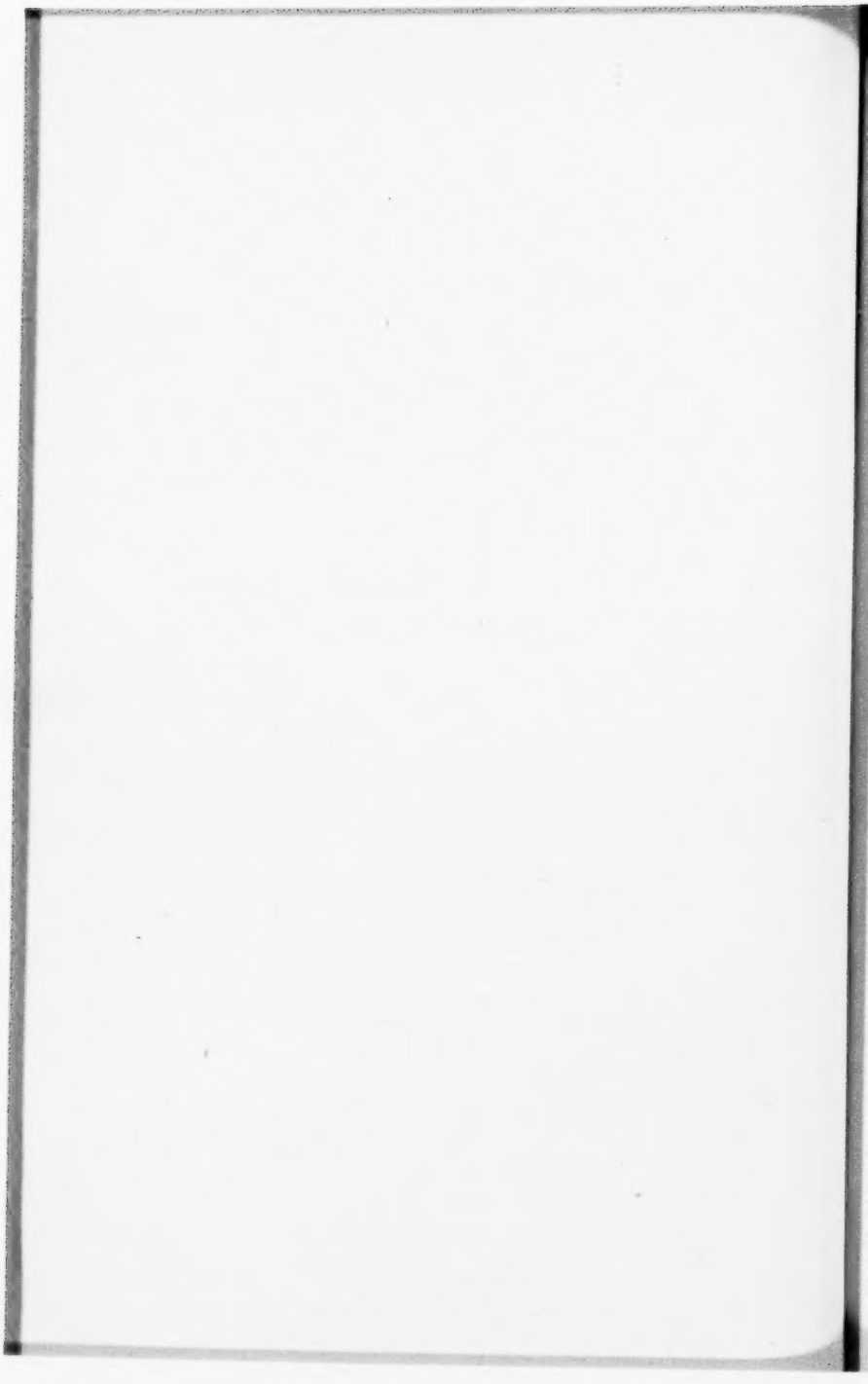

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 605

EVELYN FLYNN,
Petitioner,
vs.
CHESTER BOWLES, Price Administrator,
Respondent.

On Petition for a Writ of Certiorari to the United States Emergency Court of Appeals.

PETITIONER'S REPLY BRIEF.

EVELYN FLYNN,
530 Larkin Street, San Francisco,
Petitioner in Propria Persona.

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I.

OPENING STATEMENT IN REPLY.

Counsel for respondent bases his case and brief on the erroneous contention, entirely unsupported by the record, that the protest precedent to her complaint in the Emergency Court of Appeals was filed by petitioner against an *order* of the rent director and that consequently such protest was not properly filed until an application for review of the alleged

order had first been filed by petitioner and then denied by respondent. This contention of respondent is untenable. The record shows (R. 2, 25, 28), and respondent admits (R. 11, 22, 35, 41), that the protest was filed on September 13, 1943, at which time the alleged order had not been issued by the rent director.[1] The protest specified, in accordance with the provisions of Revised Procedural Regulation No. 3 (Sec. 1300:217) that it was against Maximum Rent Regulation No. 28 (R. 16, 17, 20) and other specified matters including

> "The *conduct* of the Administrator in the matter of her petition No. 30482, Region VIII, which she filed on April 2, 1943 and concerning which *no order or relief has been granted.*" (R. 16.)

Secondly, respondent erroneously contends that the said protest was not directed against Maximum Rent Regulation No. 28, that if it was it was filed too late; that anyway the contentions made were too vague, and that there was nothing in the protest to suggest that, as a protest against the Regulation it purported to be based upon the grounds arising more than sixty days after the issuance of the Regulation.

Thirdly, respondent has omitted from the Appendix in the brief for respondent the provisions of the

---

[1]On September 14, 1943, the day after petitioner filed her protest against the Maximum Rent Regulation No. 28, the conduct of respondent and other matters, respondent issued an order denying petition 8 S. F. 30482 and on October 9, 1943, respondent issued an order dismissing the protest and directed that it be considered as an application for review of his order of September 14, 1943, which had been issued after the filing of the protest, and which itself constituted a denial or partial denial of the protest. (R. 2, 25.)

Revised Procedural Regulation No. 3 pertinent to this case and has set forth instead wholly irrelevant sections thereof.

These matters and other questions raised by respondent will now be considered under appropriate headings.

II.

PROTEST WAS NOT DIRECTED AGAINST AN ORDER.

Under "Questions Presented" of brief for respondent on page 2 of said brief and in respondent's "Statement" and "Argument", pages 3, 4, and 9 of said brief, counsel for respondent contends that petitioner filed her protest on September 17, 1943 and that the protest and the complaint filed subsequently thereto were directed against an order of respondent dated September 14, 1943. On page 4 of said brief counsel states that the protest was filed on September 17, 1943 and on page 9 "* * * the protest was not filed until September 17, 1943, * * *"

As indicated in part I hereof, and as shown by the record, pp. 2, 25, 28, and admitted by respondent on pp. 11, 22, 35, 41 of the record, the protest was filed on September 13, 1943, before the order of respondent dated September 14th was issued. On page 35 (bottom) of the record the following statement appears in a "memorandum" of respondent:

> "* * * Complainant seeks to treat her protest, *filed on September 13, 1943,* not only as * * *"

On page 41 (center) of the record the following statement appears in another "memorandum" of respondent to the Court:

> "The Regulation was issued on June 27, 1942,[2] and the protest was not filed until *September 13, 1943,* * * *."

On page 22 (top) of the record the following statement appears in an official "Opinion" of respondent:

> "On September 13, 1943, one day before the order denying Protestant's petition was issued, Protestant filed a copy[3] of the said document entitled 'Protest' with the Regional Office of the Office of Price Administration * * *."

Thus it is conclusively shown by the record, and admitted by respondent, that the protest was filed before the order was issued, and it is also stated in the protest that at the time of making same no order had been issued on her petition. (R. 16, 19.) This fact was known to respondent and admitted. (R. 22

---

[2]It is admitted by respondent in its brief, page 2, under Statement, that Maximum Rent Regulation No. 28 was issued on *June 30, 1942* and made effective the next day on July 1, 1942.

[3]The acknowledgment of service by the chief attorney for respondent set forth on page 20 of the record shows that *six copies* were served upon him. See also R. 25, and R. 2, to the effect that six copies (an original and five copies) were filed in San Francisco and another original and five copies were filed with the secretary of respondent in Washington, D. C. As stated in petitioner's opening brief, page 21 (bottom) and page 22, respondent omitted from the endorsement appearing on page 20 of the record, the date of service. On each of the six copies forwarded to respondent the date of service was shown to be September 13, 1943. This matter was called to the attention of the Court by letter. (Petitioner's Brief in Support of Petition, page 22.) This letter to the Court was dated October 21, 1943. (R. 45.)

quoted above, see also R. 11.) In the order of respondent "dismissing" the protest, respondent states:

> "The said protest does not comply with the provisions of Revised Procedural Regulation No. 3 in that it was not filed against an order described in section 1300:214 of the Regulation." (R. 21.)

It is obvious that the protest was not directed against the "Order" of respondent which was not issued until after the protest was filed.

III.

THE PROTEST WAS DIRECTED AGAINST MAXIMUM RENT REGULATION NO. 28.

The protest which is set forth in the record, pp. 16-20, states on its face that it is against Maximum Rent Regulation No. 28 and specifies the date of issuance thereof (R. 16) as required by Revised Procedural Regulation No. 3 (Section 1300:217(c)) when the protest is against a maximum rent regulation.

Since there would be no occasion for mentioning the regulation or the date of issuance thereof in the manner there set forth unless the protest was directed against said Regulation it is apparent that such was the intent and purport of said protest.

IV.

THE PROTEST COMPLIED WITH THE REQUIREMENTS OF THE EMERGENCY PRICE CONTROL ACT OF 1942 AND REVISED PROCEDURAL REGULATION NO. 3 AS A PROTEST AGAINST MAXIMUM RENT REGULATION NO. 28.

(1) Contrary to the contention of respondent (item 4, p. 6 of its brief), Section 203(a) of the Act provides that *"any person"* subject to *"any provision"* of a regulation may file a protest against such regulation *"at any time"*, providing only that where such protest is filed after the expiration of sixty days from the effective date of the regulation that such protest is to be

> "* * * based solely on grounds arising after the expiration of such sixty days."

It cannot be denied that the protest was based solely on grounds arising after the expiration of such sixty days. The effective date of Maximum Rent Regulation No. 28 was July 1, 1942, and the earliest action of respondent protested or complained of therein was fixed as of November 2, 1942 (R. 16), more than 120 days after the effective date of the Regulation. The protest further specified on its face in part V thereof the facts forming the basis of the protest and including the acts of respondent from November 9, 1942 to September 3, 1943. (R. 18-19.)

(2) Counsel for respondent has set forth on pp. 15 to 17 of the brief for respondent the alleged "Pertinent provisions of Revised Procedural Regulation No. 3." With the exception of Section 1300: 215, *Right to Protest*, which he has set forth on page

17, all the provisions therein cited are wholly irrelevant and immaterial to the facts of this case. Counsel has omitted from the Appendix Section 1300:216 to Section 1300:220, inclusive, which sections set forth the time and place for filing protests, and the form and contents thereof. For the convenience of the Court these provisions, with the relevant parts of Section 1300:215, are set forth in the Appendix on page i hereof.

(3) Going now to test the protest by these relevant provisions of Revised Procedural Regulation No. 3 and considering the contentions of respondent relating to the protest in connection therewith, we find that Section 1300:217, *Form of Protest,* provides:

> "Every protest shall be clearly designated a 'Protest' and shall contain, *upon the first page thereof,* (a) the name of the protestant and of the defense-rental area for which the maximum rent regulation or order protested was issued, (b) a statement whether the protest is against a maximum rent regulation or order, and (c) the date of issuance and the number of such maximum rent regulation or order. * * *"

The section further provides that the protest shall be double spaced except for quotations, etc.

It must be apparent from the requirements of this section and the scope of information to be included upon the "first page" that this first page is in the nature of a title page and summary of the matter involved in the protest and that no more specific detail was required or expected than was specified.

Section 1300:219, *Contents of Protest,* specifies in subsections (a) to (g) what every protest shall contain. Reverting again to the requirements of Section 203(a) of the Emergency Price Control Act of 1942 (herein called the Act), that section specifically states that protests may be filed, "in accordance with regulations to be prescribed by the Administrator." An examination of the protest (R. 16-20) will disclose that it conforms explicitly with the requirements of the Act and regulations herein enumerated and in the order set forth by such regulation.

Respondent, however, claims that petitioner's contentions made in the protest with respect to the validity of the Act and the Regulation are unlawfully vague.

In the consideration of this point it is obvious that neither the Act or the Regulation contemplates or requires that a protestant shall specify his objections to the Act in a protest to the Administrator. The Administrator has no authority to consider or rule upon the validity of any portion of the Act. In view of the "exclusive jurisdiction" provision of Section 204(d) of the Act, however, the protestant must, if that section be valid, raise any question of the constitutionality of the Act or Regulation through the procedure of protest and complaint to the Emergency Court of Appeals set up under Sections 203 and 204 of the Act.

But what are these contentions which respondent terms unlawfully vague?

Petitioner alleged (R. 16-20):

That she was not rightfully subject to the Regulations cited, but that she had been wrongfully barred from the possession and control of her property by respondent *as shown by Petition No. 30,482 and the evidence and testimony given in support thereof* and that respondent had taken and was taking her property for the free use of tenants and without just compensation or due process of law.

That the property involved consisted of furniture and furnishings located at 530 Larkin Street in San Francisco, California, and more particularly described and located in the Petition 30,482.

That she objected to such provisions of the Act and Regulations (unknown to her) and to the acts and omissions of respondent pursuant thereto which had resulted in the improper and unlawful taking of her property without just compensation and without due process.

Petitioner cited in support of her objections the Constitution of the United States, her ownership of the property, *and all the allegations, evidence and testimony in the Petition 30,482 Region VIII, and given pursuant thereto,* and petitioner thereupon incorporated into her protest by reference said petition and said evidence and testimony.

Then pursuant to the requirement of Section 1300:219, *Contents of Protest,* subsection (f) of Revised Procedural Regulation No. 3, which provides that in cases where the protest is based upon grounds

arising after the date of issuance of the Maximum Rent Regulation, the protest shall set forth:

> "a clear and concise statement of facts showing the time when such ground arose."

petitioner set forth in part V of her protest:

> "The Administrator filed an action against protestant on or about November 9, 1942, seeking to restrain her and to prevent the proper rental of protestant's property or the collection of the agreed rental therefor; a judgment was obtained against protestant in March, 1943, which judgment has been appealed from and is now pending on appeal in the United States Circuit Court of Appeals where it is entitled Taylor (et al.) v. Brown, No. 10,509, Ninth Circuit, that while said case is pending and for more than eight months protestant has been obliged to forego any just return for the use of her property which has a value of $15,000.00 and which is in the possession of tenants at 530 Larkin St., San Francisco; that the Administrator is compelling her to provide such furnishings in many cases without any compensation whatsoever; that in no case is she permitted to receive just compensation therefor; that the furnishings are being worn out and depleted by use and her equity therein is being destroyed. Protestant petitioned to the administrator to determine what rent she could collect for said furnishings. This petition was filed March 5, 1943 and docketed as No. 8-SF-30,089. It was denied on April 6, 1943. An application for review thereon was denied May 3, 1943. On April 2, 1943 protestant sought to withdraw her furnishings from rental, but by reason of the injunction against her was required to obtain the consent of

the administrator. The petition (30,482 Reg. 8) was filed on April 2nd, 1943, to obtain this permission. No order has as yet been given on this petition although more than five months has elapsed since the filing thereof, and protestant has suffered losses of $1000.00 in the interim. On September 3, 1943, Ward Cox, acting rent director, notified protestant that if she had any objections to a Report and Recommendation in the matter, which recommended that the petition be denied, that she must file such objections within ten days from the date of this report. The report was dated August 15, 1943."

Then in part VIII of her protest, petitioner alleged that the Act and all rent control regulations and orders thereunder were null and void and unconstitutional, and that said charge was supported by the evidence and facts therein and therefore submitted. (R. 16-20.)

It is respectfully submitted that there is nothing unlawfully vague about these contentions. Petitioner alleged that she was not rightfully subject to the Regulations (R. 17) and that she did not know what provision of the Act or of Maximum Rent Regulation No. 28 respondent might cite to sustain his actions and refusals to act as set forth in the protest. (R. 16.) Petitioner alleged and offered proof that under purported authority of the Act and Regulation, respondent had taken her property without just compensation and without due process, in violation of the Constitution of the United States, and that the Act and all

rent control regulations and orders thereunder were null and void and unconstitutional.

(4) Counsel for respondent has completely overlooked the specific detail contained in the allegations, evidence and testimony incorporated into the protest in part III thereof. (R. 18 (top).) A reading of Section 1300:220 (a) of the Procedural Regulation No. 3 show that it was not contemplated that a protestant should be required to file with the protest evidence and documents already in the possession of the administrator. Respondent has not objected to the incorporation of these matters into the protest. He merely says the protest is vague in its contentions concerning the Act and Regulation. Respondent has not produced or set forth in his exhibits the contentions concerning the Act and Regulations set forth in the collateral proceedings incorporated herein.[4] In these proceedings there is no want of specific detail on any relevant point.

(5) The statement set forth in part V of the protest (R. 18-19) and hereinbefore set forth in full is a complete answer to respondent's contention on page 9 of brief for respondent, that there was nothing in the protest to suggest that, as a protest against the Regulation, it purported to be based upon grounds

[4]Among the collateral proceedings record of which is incorporated into the evidence and record of Petition 30,482 by order of respondent June 16, 1943 and thereby made a part hereof (R. 18), are Protest MR-28-19-P and Protest 15, Region VIII, Petition No. 8-SF-30,089, Taylor v. Brown, U.S.E.C.A. No. 10, Brown v. Taylor et al. (Flynn), No. 22,364W, U.S. Dist. Ct. So. Div. of No. Div. Calif., and U. S. v. Taylor, No. 27,815-S, U.S. Dist Ct. So. Div. of No. Div. Calif.

arising more than sixty days after the issuance of the Regulation. The protest specified (R. 16) that the Regulation was issued on June 30, 1942 (admitted on page 2 of Brief for Respondent) and in part V (R. 18) the protest specified the facts, showing that the grounds upon which the protest was based had arisen on and after November 9, 1942, and complying with the requirements of Section 1300:219 (f) of the Procedural Regulation No. 3, heretofore cited.

V.

RESPONDENT HAS MISCONSTRUED AND MISSTATED THE RECORD.

Counsel for respondent has misconstrued and misstated the record in the brief for respondent in the following particulars:

(1) On page 4 (top) of said brief, counsel states:

> "Although the order denying her petition did not fall within either of these exceptions, petitioner on *September 17, 1943,* filed with the Price Administrator a document entitled 'Protest of Evelyn Flynn' *in which she sought to have the Acting Rent Director's order of denial reviewed on the merits.* (R. 16-20.)"

As has been heretofore developed at some length, the protest was filed on September 13, 1943, before any "order" denying the petition was issued and petitioner stated in said protest that no order had been issued on her petition. (R. 16.)

(2) Respondent's contention, pages 4-5 of brief for respondent, that the protest was dismissed because the petitioner had not filed an application for review of the order denying her petition and that by reason of this fact was not subject to an order against which a protest might be filed under Revised Procedural Regulation No. 3, is not in strict accord with the record, nor is the opinion and order of respondent there construed relevant or material to this case except in so far as it constituted a denial or partial denial of the protest.

Considering what actually appears in the record relating to these matters, we quote from the actual order of respondent set forth at the top of page 21 of the record, to-wit:

> "The said protest does not comply with the provisions of Revised Procedural Regulation No. 3 in that it was not filed against an order described in Section 1300:214 of the Regulation.
>
> Therefore, under authority vested in the Administrator by the Emergency Price Control Act of 1942, and in accordance with Revised Procedural Regulation No. 3, it is ordered
>
> (1) That the said protest be and it hereby is, dismissed.
>
> (2) That the said protest be docketed in the Regional Office of the Office of Price Administion for Region VIII as an application for review.
>
> Issued and effective this 9 day of October, 1943.
>
> George J. Burke, Acting Administrator."

Section 1300:214 of Revised Procedural Regulation No. 3 and above cited does not refer to orders or describe any orders whatsoever, so on its face the declaration and order above is meaningless as to the grounds advanced, but it is to be noted that on page 22 of the record, in the "opinion" accompanying the order, respondent sets forth what he alleges to be Section 1300:214 of the Procedural Regulation. An examination of this section, designated "Right to Protest", discloses that it is in fact Section 1300:215 of said Regulation. (See Brief for Respondent, page 17.)

Section 1300.215 provides in part:

> "*Right to Protest.* Any landlord subject to any provision of a *maximum rent regulation,* OR *of an order* * * * may file a protest in the manner set forth below."[5]

Since the "protest" was not directed against an "order" but against Maximum Rent Regulation No. 28 in full accord with the quoted sections of the Procedural Regulation, it must be evident that the order "dismissing" the protest was improper. This order "dismissing" the protest was issued on October 9, 1943, and on October 11, 1943, respondent filed its first motion to dismiss the complaint of petitioner, basing said motion in large part on the aforesaid order issued two days previously. (R. 11.)

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[5]Refers to Sections 1300.216 to 1300.219 set forth in the appendix hereto.

(3) Contrary to respondent's contention on page 5 of its brief that petitioner moved to amend her complaint to cure a *defect* therein, the record shows that petitioner maintained at all times that her complaint was good, and that respondent's order dated September 14, 1943, was in fact a denial or partial denial of her protest. (R. 23 (bottom), 28.) Since respondent had issued his later order "dismissing" the protest *after* the complaint had been filed, and, "to avoid any possible delay or technical defect in her complaint", petitioner moved to amend concurrently with her "Objections and Answer to Respondent's Motion to Dismiss etc." (R. 23-30.)

The Court did not rule that the complaint was defective without the amendment but denied respondent's contentions by order dated November 6, 1943. (R. 37.)

(4) The grounds set forth on pages 5 and 6 of brief for respondent, purporting to be the grounds stated in respondent's motion and memorandum to dismiss the amended complaint, should be compared with the grounds as set forth in the record itself. (R. 39, 43.)

In answer to the points raised therein, petitioner adopts the statement of facts and argument set forth by her and included in the record herein on pages 43 to 52 to which this Honorable Court is respectfully referred.

VI.

RESPONDENT UNLAWFULLY SEEKS TO DEPRIVE PETITIONER OF A RIGHT OF JUDICIAL REVIEW VESTED IN HER BY THE ACT AND BY THE CONSTITUTION OF THE UNITED STATES.

The evident purpose of respondent's contentions, and the effect thereof if they be sustained, is to deprive this petitioner of a right of judicial review vested in her by Sections 203 and 204 of the Act, and guaranteed to her by the Fifth Amendment to the Constitution of the United States.

As pointed out in petitioner's brief in support of her petition for writ of certiorari, pages 18-20, petitioner's property had been taken and withheld from her without compensation for more than ten months before the filing of her complaint in the Emergency Court of Appeals. See also the record. (R. 5, 14, 17-19, 27.)

The Court through the agency of which respondent deprived petitioner of her property was prohibited from considering the validity of the authority of respondent relating thereto by the provisions of Section 204(d) of the Act. (R. 28, 52 (top).)

Petitioner does not seek judicial review of the order of the rent director denying her petition *under the Regulation.*

The Act and Regulation confer such broad discretion and powers upon the Administrator that such a review would be an idle act where as shown herein it is the purpose of respondent to deprive petitioner of her property and where he has for more than a

year refused all administrative relief and has refused to inform her as to what rents she may collect for her property which he insists must be left in the possession of tenants without compensation. (R. 5, 14, 15-16, 18-19, 20-21.) Petitioner in this situation sought judicial review of the *basic authority of respondent* to take her property without just compensation or due process and of his authority to withhold said property from her against her will and desire. It is obvious that judicial review of this authority may only be had under the Act by an attack upon the Regulation (Maximum Rent Regulation No. 28) and upon the provisions of the Act itself which confer this broad authority and discretion upon respondent.

This was the purpose and intent of petitioner's protest and complaint as plainly shown by the text and substance thereof. (R. 1-9, 16-20.) And this right of review is specifically granted by the Act. (Sections 203 and 204.)

As we have shown herein and heretofore, the protest and complaint as amended complies in every respect with the requirement of the Act and the Procedural Regulation which is itself under attack herein. (R. 1-56.)

VII.

CONCLUSION.

It is respectfully submitted that the questions presented and properly before this Honorable Court

are those questions submitted on pages seven to nine of the petition for writ of certiorari herein.

The cases cited by respondent are not applicable to this case as it is admitted here that there was a dismissal of the protest before amendment to the complaint. Respondent states in the record, page 42:

> "* * * the Administrator has therefore assumed that for the purposes of providing the right of review, an order of dismissal is a denial within the meaning of Section 204." (R. 42.)

Respondent, however, raised the point that where a protest had been "dismissed" that in such a case the Court could not consider the protest or complaint on its merits but could only consider whether the dismissal was proper. (Brief for Respondent, pp. 6, 8; R. 41-43.)

Respondent argues, page 7 of its brief and in the record on pages 42 and 43, that he (the administrator) should have been given an opportunity to "consider" the merits of the protest and write an opinion thereon and that until he does so the Court may not consider the "merits" of protest or complaint. These contentions have been answered by petitioner in the record on pages 51 and 52. The administrator has had his opportunity, he has reviewed and rereviewed the matters involved since November 9, 1942. In the collateral cases, protests, petitions and applications for review which are a part of the record of petition 30,482 and incorporated into protest and complaint herein are no less than

seven considered opinions or judgments which have been reviewed by respondent or issued by him and which cover every phase of the matters on which the protest was based. (R. 51, 5, 14, 18-19.)

It is to be observed, also, that in her *"Petition for Rehearing or Modification of Judgment"* set forth in the record on pages 53-56, petitioner requested as one alternative that the Court modify its judgment by—

> "(1) Remanding the proceedings and instructing respondent to consider and act upon complainant's protest upon its merits as relating to the entire controversy and actions therein protested commencing with the filing of injunction proceedings against complainant on November 9, 1942 as set forth in paragraph V of said protest." (R. 53.)

This prayer of petitioner was denied by the Court. (R. 56-57.)

The Court also refused to inform petitioner of the grounds upon which the complaint was dismissed and refused to grant petitioner declaratory or any other relief. (R. 56-57, 53.)

When respondent first raised objections to the complaint (which were later overruled by the Court), petitioner pointed out (R. 27)—

> "Complainant's cause of action against respondent is grounded upon specific acts of said respondent directed against her and her property and dating from November 2, 1942, and the issues and questions have been before him con-

tinuously up to the present time. If he wished to act concerning them other than as he has, he would have done so before this.

It is therefore evident that the dismissal is sought for purposes of delay. There is nothing to preclude the Administrator from granting relief or acting on the problems involved while the case is pending. (Section 204(a) of Act.)"

This suggestion was filed with the Court on October 21, 1943, over four months ago. (R. 23, 27.) As reflected by the record (R. 54) respondent has not attempted to compose or remedy the difficulties under which petitioner labors but after dismissal of the complaint has redoubled his efforts to further harass petitioner. (See also page 20 of Petitioner's Brief in Support of Petition for Writ of Certiorari.)

It is respectfully submitted that the petition should be granted.

Dated, San Francisco, California,
February 23, 1944.

EVELYN FLYNN,
Petitioner in Propria Persona.

(Appendix Follows.)